McCormac Woodworking Co., Inc. d/b/a Creative Woodworking *and* Carpenters' Local No. 978 affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 17–CA–16882–2

May 18, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

Upon a charge filed by Carpenters' Local No. 978 affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union) on August 3, 1993, the General Counsel of the National Labor Relations Board issued a complaint and an amendment to complaint on September 30, 1993, and March 7, 1994, respectively, against McCormac Woodworking Co., Inc. d/b/a Creative Woodworking (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent filed an answer to the original complaint on October 15, 1993, by letter dated March 15, 1994, it subsequently withdrew that answer and advised that it would make no response to the allegations in the amendment to complaint.

On March 28, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On March 30, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, as indicated above, the undisputed allegations in the Motion for Summary Judgment disclose that although the Respondent filed an answer to the original complaint, the Respondent subsequently withdrew that answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations in the complaint are considered admitted.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Missouri corporation with an office and place of business in Springfield, Missouri, has been engaged in the operation of providing woodwork and carpentry work for commercial contractors. During the 12-month period ending February 28, 1993, the Respondent, in conducting its business operations, purchased and received at its Springfield, Missouri facility goods valued in excess of $50,000 from enterprises located in the State of Missouri who had received such goods directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at its 1730 East Atlantic, Springfield, Missouri facility EXCLUDING office clerical employees and supervisors as defined in the Act.

Since about 1986 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since that date the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 1, 1992, to April 30, 1996.

At all times since 1986, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 19, 1993, the Respondent sold its business to Creative Architectural Co.

About March 1, 1993, the Union, by letter, requested that the Respondent meet and bargain with it concerning the effects of the Respondent's decision to sell its business.

Since about March 3, 1993, and continuing to date, the Respondent had failed and refused to meet and bargain with the Union concerning the effects of the Respondent's decision to sell its business.

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused since March 3, 1993, to meet and bargain over the effects of its decision to sell its business to Creative Architectural Co., we shall order the Respondent, on request, to bargain collectively with the Union over the effects of its decision to sell its business. In addition, we shall accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses they may have suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).[2] Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in the event the Respondent's facility is currently closed and the Respondent therefore has no place of business to post the attached notice, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

[2] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). In *Transmarine*, the Board ordered an employer that had unlawfully refused to bargain over the effects of its plant closure decision to, inter alia, pay unit employees at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) an effects bargaining agreement was reached; (2) a bona fide bargaining impasse was reached; (3) the union failed to timely request or commence bargaining; or (4) the union failed to bargain in good faith. Id. The Board further specified that ''in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.'' Id.

As the complaint and motion are less than clear, however, as to the actual impact, if any, of the sale of its business on the employees, we shall permit the Respondent to contest the appropriateness of such a *Transmarine* backpay remedy at the compliance stage. See *United Exposition Service Co*., 313 NLRB 1007 (1994).

ORDER

The National Labor Relations Board orders that the Respondent, McCormac Woodworking Co., Inc. d/b/a Creative Woodworking, Springfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively with Carpenters' Local No. 978 affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO, as the exclusive bargaining representative of the employees in the unit described below, concerning the effects of its decision to sell its business on February 19, 1993, to the Creative Architectural Co.:

> All production and maintenance employees employed by Respondent at its 1730 East Atlantic, Springfield, Missouri facility EXCLUDING office clerical employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain in good faith with the Union over the effects of its decision to sell its business to Creative Architectural Co. on February 19, 1993.

(b) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under this Order.

(d) Sign copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent at its Springfield, Missouri facility immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.[4] If the facility is closed, the Respondent shall instead mail an exact copy of the signed notice to all

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[4] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

unit employees at their last known address and to the Union at its business address.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to meet and bargain collectively with Carpenters' Local No. 978 affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO as the exclusive bargaining representative of the employees in the unit described below, concerning the effects of our decision to sell our business on February 19, 1993, to the Creative Architectural Co.:

> All production and maintenance employees employed by us at our 1730 East Atlantic, Springfield, Missouri facility EXCLUDING office clerical employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain in good faith with the Union over the effects of our decision to sell our business to Creative Architectural Co. on February 19, 1993.

WE WILL pay limited backpay to the employees who were employed by us, plus interest.

MCCORMAC WOODWORKING CO., INC.
D/B/A CREATIVE WOODWORKING